Supreme Court, U.S.
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No. 97-51

In The

# Supreme Court of the United States

October Term, 1996

FRED L. MURRAY, JR.,

*Petitioner,*

*vs.*

TRANS UNION CORPORATION,

*Respondent.*

*On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit*

## RESPONDENT'S BRIEF IN OPPOSITION

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## STATEMENT PURSUANT TO RULE 29.6

Trans Union Corporation is a Delaware corporation and a member of the Marmon Group and has no subsidiaries. The shares of Marmon and TUC are not publicly traded.

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## REASONS FOR DENYING THE WRIT

### A. Introduction.

This is a routine matter arising under the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (the "FCRA"). No novel questions were involved in this action and well-established precedent determined the outcome.

None of the many questions presented for review is an appropriate basis for the grant of certiorari. Moreover, the alleged conflict among the circuits on the issue of "accuracy", does not exist.[1] Simply put, petitioner has presented no question of law of "importance to the public as distinguished from that of the parties" which is appropriate for review by this Court. *National Labor Relations Board v. Pittsburgh Steamship Co.*, 71 S. Ct. 453, 455 (1951).

### B. Statement Of The Case.

In August, 1987, petitioner applied for and obtained a credit card account from BP America ("BP"). The explicit terms of the account called for payment in full upon receipt of a monthly bill. Petitioner failed to make timely payments and the account was placed in collection. This information was furnished by BP to various consumer reporting agencies including respondent, Trans Union Corporation ("TUC"). The BP account was

1. Significantly, of the twelve questions presented for review, only the issue of "accuracy" is pressed in the argument portion of petitioner's brief. Issues under "FCBA, FDCPA and TILA," (VI); the alleged "fiduciary relationship" between consumer reporting agencies and consumers (VII) and the question whether "there was an implied acceptance of petitioner's version of the dispute" (VIII) were not previously raised and are not addressed in petitioner's Brief. *See Taylor v. Freeland & Kronz*, 112 S. Ct. 1644, 1649 (1992) ("ordinarily this Court does not decide questions not raised or resolved in the lower court(s)".)

classified in petitioner's TUC consumer file as a "9B" collection account. Petitioner eventually paid the $63.85 outstanding balance to the collection agency. Thereafter, TUC modified its records to reflect the payment.

Petitioner does not contest his ownership of the BP account or that the account was placed for and paid while in collection. Petitioner's sole claim was that the account should never have been placed in collection. He argued that his failure to comply with the explicit terms of the credit agreement was caused by BP's misleading explanation of its terms and an alleged oral agreement with BP. Petitioner repeatedly badgered BP to have the adverse BP account information removed from his consumer file. BP repeatedly denied his requests.

In July, 1992, at petitioner's request, TUC placed a consumer statement in his consumer file indicating that he disputed the accuracy of the BP account information.[2] In September, 1992, in direct response to a threat of litigation by petitioner, BP made an "economic decision" to delete the derogatory BP account from petitioner's consumer file and instructed the consumer reporting agencies, including TUC, accordingly. TUC modified petitioner's file and removed the consumer statement because the referenced collection account had been deleted.

BP did not remove the "collection account" status from the tapes it submitted to TUC. As a result, the new tapes reinstated the "collection" reference on TUC's records.[3] Wachovia Bank

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2. Petitioner's Brief mentions a Citibank (petitioner's Brief, p. 4) and AIC account (petitioner's Brief, p. 11) which he disputed to TUC. However, these accounts were never the subject of this litigation.

3. In general, creditors, including BP, submit account update information to TUC via magnetic tapes which TUC downloads directly into its system.

("Wachovia") was the only creditor to receive a TUC report after the re-inclusion of the collection account denotation. However, petitioner presented no proofs that Wachovia would have treated his application differently had the collection account not been reported. Thus, TUC accurately reported the disputed BP account and petitioner failed to prove that he suffered any damages as a result of the furnishing of credit information by TUC.

**C. Proceedings In The District Court And The Court Of Appeals.**

Petitioner filed the instant complaint, pro se, alleging malicious and willful noncompliance with the FCRA, the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.* ("ECOA") and various state law claims. By Memorandum and Order dated February 12, 1996, the District Court granted TUC's motion for summary judgment and entered judgment in its favor. (A. 9-18). On December 3, 1996, the United States Court of Appeals for the First Circuit affirmed the judgment and adopted the reasoning of the district court. In addition, the court of appeals held that the record failed to establish a violation of § 1681i. (A. 6-8). Petitioner's lawsuit arises solely from TUC's reporting of the BP account as "placed for collection."[4] Petitioner contends that TUC was not entitled to report the BP account as placed for collection because his failure to pay the account was a result of his contract dispute with TUC. Based on the foregoing, petitioner

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4. Murray's contentions in support of his petition for writ of certiorari are contained in paragraphs 14 through 25 of his petition. (petitioner's Brief, p. 7-11). Paragraphs 14 and 15 allege illegality of the circuit court opinion; paragraphs 16 through 18 allege improprieties with respect to appearance of counsel; paragraphs 22 and 23 assert incomprehensible due process violations; and paragraphs 24 and 25 concern the nature of TUC's response to arguments in the court below. TUC respectfully submits that none of the foregoing is a basis for the Court's review and that petitioner's arguments are without merit or legal foundation.

alleged, inter alia, violations of the FCRA. The District Court correctly decided that petitioner's claims must fail because the information reported by TUC was accurate and because he did not prove any harm. (A. 15).

The fundamental question below was whether TUC had accurately reported the BP account information. Dispositively, the District Court found that:

> Two critical facts are undisputed: (1) that Murray failed to comply with the payment terms of his BP account; and (2) that BP placed the account for collection. (A. 16).

In *Cahlin v. General Motors Acceptance Corporation*, 936 F.2d 1151 (11th Cir. 1991), the Court held:

> In order to make out a *prima facie* violation of [§ 1681e(b)], the [FCRA] implicitly requires that a consumer must present evidence tending to show that a credit reporting agency prepared a report containing "inaccurate" information. [footnote omitted] **If he fails to satisfy this initial burden the consumer, as a matter of law, has not established a violation of [§ 1681e(b)] and a court need not inquire further as to the reasonableness of the procedures adopted by the credit reporting agency**. *Cahlin, supra*, 936 F.2d at 1156. (emphasis supplied).

Those principles are consistent with a long line of authority. *Koropolous v. Credit Bureau, Inc.* 734 F.2d 37, 39 (D.C. Cir. 1984); *Stewart v. Credit Bureau, Inc.*, 734 F.2d 47, 51 (D.C. Cir. 1984); *Boothe v. TRW Credit Data*, 768 F. Supp. 434, 437 (S.D.N.Y. 1991) ("If the information is accurate, no further inquiry into the reasonableness of the consumer reporting

agencies procedures is necessary."); *Houston v. TRW Information Services*, 707 F. Supp. 689, 691 (S.D.N.Y. 1989); *Grays v. Trans Union Credit Information Co.*, 759 F. Supp. 390, 393 (N.D. Ohio 1990); *Hussain v. Carteret Savings Bank, F.A.*, 704 F. Supp. 567, 569 (D. N.J. 1989); and *Wright v. TRW Credit Data*, 588 F. Supp. 112, 114 (S.D. Fla. 1984) ("it is axiomatic that no claim can be stated under [the FCRA] unless plaintiff demonstrates that the report he challenges was inaccurate.")

Petitioner also wrongly claims that the re-inclusion of the account constituted an FCRA violation. Here again, the **accuracy** of the information controls:[5]

> Because the negative information regarding the BP account was accurate at its inception, it is immaterial that Trans Union continued to report it after BP requested that it be deleted, or that Trans Union later reinserted it. "Although a credit reporting agency has a duty to make a reasonable effort to report 'accurate' information on a consumer's credit history, it has no duty to report only that information which is favorable or beneficial to the consumer."

[Quoting *Cahlin, supra*, 936 F.2d at 1158] (A. 16).[6]

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5. The re-reporting of information here must be distinguished from the re-reporting of inaccurate information deleted **because** it was inaccurate. *Morris v. Credit Bureau of Cincinnati*, 563 F. Supp. 962 (S.D. Ohio 1983) and *Stevenson v. TRW, Inc.*, 987 F.2d 288 (5th Cir. 1993). Here, the information re-reported was **not inaccurate** and was removed by BP only to avoid litigation.

6. The District Court also appropriately dismissed petitioner's claim under ECOA as entirely frivolous. TUC was not a "creditor" as defined by the ECOA and petitioner did not prove he was denied a loan because of his race color or national origin. (A. 17). Likewise, his state law "unjust enrichment" claim was properly dismissed because, not surprisingly, he had no proof that TUC "enriched itself at [petitioner's] expense" by reporting the BP account. (A. 18).

Petitioner's assertion that BP's business decision rendered the information inaccurate is erroneous. A similar contention was expressly rejected in *Cahlin, supra*. There, Cahlin claimed that a consumer reporting agency was required to "cease reporting any derogatory information" after settlement of a disputed account. *Cahlin, supra*, 936 F.2d at 1158. However, the instructions to remove:

> any derogatory information about Cahlin's account were largely motivated by a desire to mollify Cahlin and avoid potential ligation, not to correct any reporting errors. . . . Thus from GMAC's perspective Cahlin's account would have been most accurately reported if it had been carried as a charged off account that was later paid off.

*Cahlin, supra*, 936 F.2d at 1158. The Court held that continued reporting that the disputed debt had been charged off was "accurate" and "not actionable under the FCRA." *Cahlin, supra*, 936 F.2d at 1160.

Similarly, the District Court appropriately highlighted the fact that BP never regarded the account information as inaccurate. The Court credited the undisputed testimony of BP's representative that:

> [e]ven though the information that we were reporting was accurate and correct . . . it was an *economic decision* [to report a new status for the account] based on the stream of correspondence that we received from Mr. Murray, and the fact that he was now threatening to involve us in a complaint with the FTC. At this point, as I said, it was

> an economic decision. (Emphasis added). (A. 12).

In short, the reporting and re-reporting of the account as "placed for collection" were equally accurate.[7]

Irrespective of "accuracy" considerations, petitioner's claims against TUC must fail because he offered no proof that he was harmed by TUC's manner of reporting of the BP account. In this connection, the District Court correctly determined that:

> Even if Murray could show that the BP information was not only false but negligently reported by Trans Union, he has not shown that he can prove any economic damages. (A. 15).

As succinctly stated in *Cahlin*,[8] *supra*:

> We need not reach the substance of Cahlin's FCRA claims against TRW because we find that he has utterly failed to produce any evidence tending to show that he was damaged as a result of an allegedly inaccurate TRW credit report. . . . We stress that Cahlin had the affirmative duty of coming forward with evidence supporting his claim that TRW's

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7. Petitioner's reliance on *Koropolous, supra*, is misplaced. There, the Court of Appeals held that summary judgment was inappropriate in the face of testimony by plaintiff's expert that the information, although technically accurate, would have misled prospective creditors to plaintiff's detriment. Instantly, plaintiff offered no evidence that TUC's report was misleading or, in fact, misled anyone.

8. *See also Casella v. Equifax Credit Information Systems*, 56 F.3d 469, 474 (2nd Cir. 1995) (rejecting plaintiff's claims "due to a lack of causation between the harm alleged . . . and alleged violations of the FCRA.")

> alleged inaccurate report caused him harm . . . *Cahlin, supra*, 936 F.2d at 1160-61.

The foregoing is equally compelling here.

The FCRA's dispute/reinvestigation provision, § 1681i, requires "a *factual* deficiency or error that could have been remedied by uncovering additional facts." *Cahlin, supra*, 936 F.2d at 1160. No additional investigation by TUC would have undermined the accuracy of the information it reported concerning the BP account. As such, petitioner's claims under FCRA § 1681i also failed.

The District Court also correctly dismissed petitioner's claims for defamation, invasion of privacy, and gross negligence based on the undisputed accuracy of the information reported and FCRA § 1681h(e) which bars:

> any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency . . . except as to false information furnished with malice or willful intent to injure.

Accordingly, "[b]ecause the information regarding [petitioner's] credit history was true, there are no facts that would support a finding of malice or willful intent to injure." (A. 17).

## CONCLUSION

For all of the foregoing reasons, the Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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